

Message Text

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ACTION ARA-10

INFO OCT-01 EA-06 ISO-00 EB-04 AEC-05 AID-05 CEA-01

CIAE-00 CIEP-01 COME-00 DODE-00 FEAE-00 FPC-01 H-01

INR-05 INT-05 L-02 NSC-05 OMB-01 PM-03 RSC-01 SAM-01

OES-02 SP-02 SS-15 STR-01 TRSE-00 FRB-01 PA-01 PRS-01

USIA-06 EUR-12 NIC-01 ARAE-00 /100 W

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P 131755Z NOV 74

FM AMEMBASSY LIMA

TO SECSTATE WASHDC PRIORITY 2708

INFO AMEMBASSY TOKYO

C O N F I D E N T I A L LIMA 9579

E.O. 11652: GDS

TAGS: EGEN, PINT, PFOR, ENRG, PE

SUBJECT: JAPANESE-PERUVIAN PIPELINE CONTRACTS ATTACKED AS

"SELL-OUT OF PERUVIAN SOVEREIGNTY"

REFS: LIMA A-239 (NOTAL), LIMA 7814

1. SUMMARY: MILITARY GOVERNMENT HAS BEEN EMBARRASSED BY PUBLISHED REVELATION THAT PIPELINE FINANCING CONTRACT WITH JAPANESE CONTAINS CLAUSES PROVIDING THAT ARBITRATION OF DISPUTES WILL BE SUBJECT TO JAPANESE LAW IN CASE OF LOAN CONTRACTS, AND BRITISH LAW IN CASE OF SALES CONTRACT. ISSUE IS HIGHLY SENSITIVE SINCE IT CONFLICTS WITH FUNDAMENTAL TENET OF PERUVIAN POLICY THAT PROTECTION OF PERU'S ECONOMIC INTERESTS REQUIRES EXCLUSIVE APPLICATION OF PERUVIAN LAW IN PERUVIAN COURTS. PUBLIC CRITICISM THIS HAS AROUSED, EVEN IN PRO-GOVERNMENT PRESS, RAISES SPECTRE OF "ENTREGUISMO", OR SELLING OUT PERUVIAN SOVEREIGNTY, AND IS EMBARRASSINGLY CLOSE TO ISSUE RAISED BY IPC CASE AND "ACT OF TALARA", THE PRETEXT ON WHICH THE MILITARY OVERTHREW BELAUNDE IN 1968. IT IS TOO EARLY TO TELL WHETHER GOP WILL FEEL COMPELLED TO FIND A SCAPEGOAT, CONFIDENTIAL

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ALTHOUGH THERE ARE RUMORS THAT MINISTER OF MINES FERNANDEZ

MALDONADO AND PETROPERU PRESIDENT FERNANDEZ BACA COULD BE THREATENED IF ISSUE ESCALATES. IT SEEMS CLEAR, HOWEVER, THAT NO MATTER HOW GOP DECIDES TO PLAY THIS ISSUE, ITS REVOLUTIONARY CREDENTIALS HAVE BEEN TARNISHED. END SUMMARY

2. IN RESPONSE TO BLISTERING ATTACK ON TERMS OF JAPANESE-PERU PIPELINE CONTRACTS LAUNCHED BY BEDOYA REYES EX-MAYOR OF LIMA AND POLITICAL LEADER, ON OCTOBER 22 (A-239), GOP ON OCTOBER 29 PUBLISHED FULL TEXT OF BASIC AGREEMENT AND TEXT OF ONE OF THREE SUBSIDIARY CONTRACTS BETWEEN PERUVIAN AND JAPANESE AGENCIES IN PERUVIAN OFFICIAL GAZETTE, PRESUMABLY IN HOPE THAT REVELATION OF TEXT WOULD QUIET OPPOSITION. HOWEVER, LANGUAGE OF TEXT WHICH STATES CLEARLY THAT DISPUTES INVOLVING LOANS TO PERU WILL BE SUBJECT TO AND INTERPRETED ACCORDING TO JAPANESE LAW, AND THAT PERUVIAN AGENCIES RENOUNCE CLAIM TO SOVEREIGN IMMUNITY, HAS STIRRED UP OPPOSITION FROM CONSERVATIVE, ANTI-GOVERNMENT LIMA BAR ASSOCIATION, AS WELL AS CAUSED CONCERN AMONG SOME ELEMENTS LOYAL TO GOP. (SALES CONTRACT, TEXT OF WHICH NOT PUBLISHED, ALLOWS FOR ARBITRATION IN BRITISH COURTS.) IN NOVEMBER 11 MANIFESTO PUBLISHED IN TWO LIMA PAPERS, LIMA BAR ASSOCIATION (COLEGIO DE ABOGADOS) ATTACKED CONTRACTS AS VIOLATION OF PERUVIAN CONSTITUTION WHICH PROHIBITS GOP FROM MAKING CONTRACTS WITH FOREIGNERS WHICH DO NOT CONTAIN AN EXPRESS ACCEPTANCE BY FOREIGNERS OF PERUVIAN COURTS AND LAWS IN CASE OF CONTRACT DISPUTES. DURING LAST FEW DAYS, MINISTER OF MINES FERNANDEZ MALDONADO, IN RESPONSE TO PRESS QUESTIONS, REJECTED LAWYERS' CHARGES AS UNFOUNDED. ON SECOND OCCASION, MINISTER SAID THAT THE CONTRACTS BENEFITTED PERU, AND SAID A FURTHER EXPLANATION OF THE CONTRACTS MIGHT BE FORTHCOMING LATER.

3. MEANWHILE, "EL COMERCIO" NOVEMBER 12 CARRIED FULL PAGE DISCUSSION OF LEGAL ARGUMENTS INVOLVED, INCLUDING 1932 PARLIAMENTARY DEBATE OVER CONSTITUTIONAL PROVISIONS, NOTING BOTH IN AN EDITORIAL AND IN TEXT THAT THE QUESTION OF CONTRACT LEGALITY SHOULD BE EXAMINED THOROUGHLY. SAME DAY, "LA PRENSA", PUBLISHED AN AP WIRE STORY FROM WASHINGTON QUOTING EX-PRESIDENT BELAUNDE WHO STATE GOP HAD COMMITTED GRAVE ACT OF SELLING-OUT PERUVIAN SOVEREIGNTY, PARTICULARLY WHEN THESE VERY SAME MILITARY HAD SEIZED POWER USING AS A PRETEXT THAT BELAUNDE

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HAD OFFENDED NATIONAL SOVEREIGNTY IN SIMILAR MATTER IN ACT OF TALARA.

4. COMMENT: UNWANTED CRITICISM AND REVELATION OF TEXT ITSELF HAS TOUCHED A MOST SENSITIVE NERVE. IN PERUVIAN CONTEXT, AN ACCUSATION OF "ENTREGUISMO" OR SELLING OUT NATIONAL SOVEREIGNTY IS A SERIOUS ISSUE. WE UNDERSTAND FROM JAPANESE CHARGE THAT DECISION TO PUBLISH WAS TAKEN IN OCTOBER 29 CABINET MEETING,

OVER THE PROTEST OF MINISTER OF MINES FERNANDEZ MALDONADO. TWO PRO-GOVERNMENT LAWYERS HAVE INFORMED EMBASSY THAT THIS ISSUE COULD CAUSE SERIOUS HARM TO POSITIONS OF THE MINISTER AND OF PETROPERU PRESIDENT FERNANDEZ BACA, SHOULD LOCAL PRESS AS WELL AS LAWYERS CONTINUE TO MAKE INVIDIOUS COMPARISONS BETWEEN TERMS OF JAPANESE CONTRACT AND THE IPC CASE. IT ALSO NOTEWORTHY THAT NEWLY "SECTORIZED" PRESS, RATHER THAN IGNORING ISSUE, HAS DELIBERATELY PLAYED UP MORE EMBARRASSING ASPCTS OF CASE, INCLUDING BELAUNDE'S REMARKS AND CONFLICT WITH CONSTITUTIONAL PROVISIONS. ALTHOUGH FOREIGN MINISTRY AND STATE BANKING SOURCES TELL US THAT ISSUE WILL BLOW OVER, IT REMAINS TO BE SEEN WHETHER GOP WILL FEEL IT NECESSARY TO COUNTERATTACK, AND/OR FIND SCA-PEGOATS AMONG ITS OWN MEMBERS BEFORE THE AFFAIR RUNS ITS COURSE. NEEDLESS TO SAY, IT CLEARLY IS IN GOP INTEREST TO ABIDE BY TERMS OF CONTRACT, NOT ONLY TO AVOID JEOPARDIZING PIPELINE FINANCING PACKAGE, BUT ALSO TO CONTINUE TO OBTAIN LOANS FROM INTERNATIONAL LENDERS, SINCE FEW IF ANY WOULD ACCEPT BORROWER'S JURISDICTION IN CASE OF DISPUTES AS A CONDITION FOR A LOAN.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LAW, POLICIES, SOVEREIGNTY, PETROLEUM PIPELINES, CONTRACTS, MILITARY GOVERNMENT
Control Number: n/a
Copy: SINGLE
Draft Date: 13 NOV 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: cunninfx
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974LIMA09579
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D740327-0672
From: LIMA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19741148/aaaabofx.tel
Line Count: 136
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION ARA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: LIMA A-239 (NOTAL), LIMA 7814
Review Action: RELEASED, APPROVED
Review Authority: cunninfx
Review Comment: n/a
Review Content Flags:
Review Date: 01 AUG 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <01 AUG 2002 by cunninfx>; APPROVED <17 MAR 2003 by cunninfx>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: JAPANESE-PERUVIAN PIPELINE CONTRACTS ATTACKED AS "SELL-OUT OF PERUVIAN SOVEREIGNTY"
TAGS: EGEN, PINT, PFOR, ENRG, PE, JA
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005